

## United States District Court, Northern District of Illinois

**DOCKETED**

NOV 28 2006

Name of Assigned Judge or Magistrate Judge	Arlander Keys	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	06 M 295	DATE	11/28/2006
CASE TITLE	In the Matter of the Extradition of Edward Mazur		

**DOCKET ENTRY TEXT**

Memorandum Opinion & Order entered. For the reasons explained more fully in the attached Memorandum Opinion & Order, the Court finds that Mr. Mazur has failed to show that "special circumstances" exist in this case to overcome the presumption against bail that ordinarily applies in extradition matters. Accordingly, the Court denies Mr. Mazur's application for bail. *AK*

■ [ For further detail see separate order(s).]

Notices mailed by Judicial staff.

<p>11/28/06 10:15:10 AM</p> <p>25:00 PM 28 NOV 2006</p>	<p>Courtroom Deputy Initials:</p>	<p>FT / <i>scry</i></p>
---	---------------------------------------	-------------------------

15

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

DOCKETED  
NOV 28 2006

IN THE MATTER OF THE EXTRADITION	)	
	)	No. 06 M 295
OF	)	
	)	Magistrate Judge
EDWARD MAZUR	)	Arlander Keys

MEMORANDUM OPINION AND ORDER

On June 25, 1998, Marek Papala, who had, until January of that year, held the post of Commander General of the Warsaw Department of Police, was murdered, shot once in the head as he exited his car in front of his home at about 10:00 p.m. Almost seven years later, on February 1, 2005, a criminal court in Warsaw, Poland issued a provisional arrest warrant for Edward Mazur for the crime of enticing Artur Zirajewski in April 1998 to murder General Papala in exchange for the payment of \$40,000. On April 4, 2005, the Polish Embassy asked the United States, consistent with an Extradition Treaty between the two countries, to extradite Mr. Mazur to Poland to face the charge.

On October 19, 2006, the United States Attorney for the Northern District of Illinois filed a complaint, under seal, seeking the arrest of Mr. Mazur based upon documents received, through the State Department, from the Polish authorities. Based upon the proffer, this Court issued the warrant, and Mr. Mazur was arrested. The Court ordered the parties to appear on October 25, 2006 to address the merits of the extradition request. At

16

that time, counsel for Mr. Mazur asked the Court to hold, in effect, a detention hearing, to give him the chance to challenge the constitutionality of the presumption against bail and, in the event the Court rejected that challenge, to demonstrate the existence of "special circumstances" justifying Mr. Mazur's release on bond pending resolution of the government's extradition petition. The government did not object, though it reiterated its position that bail should be denied.

The parties filed briefs on the bail issue, and the Court held the requested hearing on November 15, 2006. At that time, Mr. Mazur presented testimony from seven witnesses - his ex-wife, his current wife, his 19-year-old son, his business partner, two former co-workers, and the FBI agent who arrested him; counsel for Mr. Mazur also read a prepared statement from Mr. Mazur himself. For the most part, the witnesses testified to Mr. Mazur's unimpeachable character and to his strong connections and ties to the area - both family-related and business-related.

Conrad Pawlowski, a former work colleague, testified first; he stated that he has known Mr. Mazur since about 1973. Mr. Pawlowski testified that he first met Mr. Mazur when they worked together at Arthur G. McKee, an engineering construction business; he testified that, after retiring from McKee, he started a business that involved importing products from Poland and, at times, he would see Mr. Mazur in Poland if they both

happened to be there at the same time. Mr. Pawlowski testified that he has always known Mr. Mazur to be very involved in his community and very helpful to people; he testified that, in his view, Mr. Mazur is honest and reliable, and that, if he were released on bond, Mr. Mazur would definitely not flee. On cross-examination, Mr. Pawlowski admitted that he has had limited contact with Mr. Mazur since about 1985, that he does not know the details of any of his business dealings in Poland, and that anything he does know about Mr. Mazur's business dealings would have been based upon what Mr. Mazur would have told him.

Nandor Fenyo, a Swiss resident who worked with Mr. Mazur for four or five years in the mid-1980s, testified, via affidavit, that Mr. Mazur was instrumental in making countertrade arrangements under which Poland could sell its products abroad and use that money to fund imports of needed foods; in Mr. Fenyo's view, what Mr. Mazur did for Poland was "marvelous." Affidavit of Nandor Fenyo, ¶¶4, 6 (included at Relator's Exhibit 21). Mr. Fenyo stated that, when he worked with Mr. Mazur, he found him to be "absolutely reliable," "honest and above board"; he further stated that he has maintained sporadic contact with Mr. Mazur through the years, and it is his belief that Mr. Mazur's character has remained the same. *Id.*, ¶¶5, 7.

Barbara Mazur, the relator's ex-wife testified next. Briefly, she testified that she maintains a close relationship

with her ex-husband (they had a son together); in her view, he is a wonderful, loving, sensitive person who doesn't belong here (in court, presumably, wearing an orange jumpsuit). She testified that if he were released on bond, there is "no way" he would flee. On cross-examination, Ms. Mazur testified that she does not know about Mr. Mazur's business dealings in Poland; nor does she know anything about any property or assets Mr. Mazur might have in this country, in Poland or elsewhere.

Next, counsel for Mr. Mazur called Thad Boertje, the FBI special agent who arrested Mr. Mazur on October 20 pursuant to the provisional arrest warrant issued by this Court in connection with the extradition request. Agent Boertje testified that, when he was arrested, Mr. Mazur was cooperative - he did not resist the arrest, he answered all of the questions the agents asked of him, he authorized the agents to search his home (they did not have a search warrant), he pointed them to relevant documents, he told them that he had a gun and showed them where he stored it, and he told them where he kept his passports. Agent Boertje testified that he had confiscated Mr. Mazur's passports and that, to his knowledge, no other passports existed for Mr. Mazur. Agent Boertje also testified that he was aware that, in 2002, Mr. Mazur was arrested in Poland on the same charges that gave rise to the current extradition request; at that time, he was released without being charged.

The Court next heard from Michael Mazur, the relator's 19-year-old son. Michael Mazur testified that his father has been and continues to be the most influential person in his life; he supported him in all of his academic and athletic endeavors; he testified that his father always advocated following the rules, regardless of the situation. Michael testified that it was "ridiculous" to think that his father would flee if released on bond; he testified that "there is no doubt that he would stay here." Transcript of Proceedings from November 15, 2006, p. 59.

Counsel then read a statement from Mr. Mazur, the relator, setting forth his cooperation with the Polish authorities in 2002, and stating that he has known about the Polish arrest warrant and the extradition request for almost two years, yet he has not fled the country or gone into hiding. See Relator's Exhibit 8.

Next, counsel for Mr. Mazur presented Chris Nowacki, an engineer who owns ESWL Products, a company involved in the development of medical equipment for use in noninvasive procedures. Mr. Nowacki testified that he and Mr. Mazur are equal partners in the business; Mr. Mazur invested over \$2 million in ESWL to finance the process of obtaining FDA approval of ESWL's products. Mr. Nowacki testified that, in his view, Mr. Mazur is a caring person, a great networker; he testified that Mr. Mazur was always very honest with him. He testified that Mr.

Mazur made no attempt to flee or hide when he learned about the international arrest warrant, and that he definitely did not think that Mr. Mazur would flee if released on bond.

Finally, the Court heard from the current Mrs. Mazur. Anna Mazur testified that she came to the United States from Poland in 1986 and married the relator that same year. She testified about Mr. Mazur's business relationships, jobs and consulting agreements; she testified as to what assets she and her husband have in this country and in Poland; and she testified about the many civic and charitable activities she and her husband take on. Mrs. Mazur testified that her husband knew about the Polish arrest warrant and knew about the extradition request, but that he made no attempt to flee or hide from the authorities. Instead, she testified, her husband has consistently attempted to clear his name in Poland by writing to the prosecutor general, the prosecutor of appeal, and anyone else he thinks might be able to help him. She testified that he also sued the editor and publisher of a newsletter called "The Siec," which published an article suggesting that Mr. Mazur had organized crime ties and that he was involved in General Papala's murder; the publisher issued a retraction and the parties stipulated to the dismissal of that case. Mrs. Mazur testified that her husband would not flee if released; she also testified that she was willing to post a \$4 million bond to secure his appearance at future court

proceedings.

At the close of the evidence, the lawyers argued their respective positions concerning bail. Mr. Mazur's attorney began by challenging the constitutionality of the "special circumstances" test, which, he claimed is based on a "throw away phrase" in *Wright v. Henkel*; counsel asked the Court to apply instead the vast body of due process law that has developed in the century since that case was decided, and to release Mr. Mazur on bond. In support of his request for bail, counsel argued - passionately - that his client should be free because he is a United States citizen; he has unbelievably strong ties to his community (his wife, sons and in-laws all live here, and he has cultural, social and personal ties to Chicago); he is a respected businessman who has worked for respected businesses in the Chicago area and overseas; he has no criminal record; he has cooperated fully with the FBI and with the Polish authorities in connection with the Papala murder and with the extradition; he has the backing of various witnesses who vouched that, if released, he would never flee - indeed, counsel argues, he has "already voted with his feet on that question" because he knew about the international arrest warrant and knew about the extradition request, yet, rather than run away, he continued to live his life as he always had, and, when the FBI came for him, he did not resist arrest, but answered questions, consented to a



search and even directed the agents to relevant documents and other evidence. All of this, counsel argues, amounts to "special circumstances" warranting Mr. Mazur's release from jail pending resolution of the extradition petition.

The government, for its part, argued that the evidence presented in court showed at best only that Mr. Mazur is not a risk of flight. The government argued that (1) risk of flight was irrelevant unless Mr. Mazur first demonstrated the existence of "special circumstances"; and (2) even if the Court reached the question of risk of flight, the fact of the matter is that Mr. Mazur is a flight risk - he has the money and the means to flee, he has connections in other countries, and, if extradited and held to answer on the charge he faces in Poland, he will likely spend the rest of his life in prison.

#### Discussion

"In our society, liberty is the norm, and detention prior to trial or without trial is the carefully limited exception."

*United States v. Salerno*, 481 U.S. 739, 755 (1987), *quoted in Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004). Federal common law in the area of foreign extradition turns this premise on its head; in extradition cases, there is a presumption *against* bail, and detention is ordered as a matter of course, unless the extraditee (extradition matters are not criminal cases, and so the subject of the extradition request is referred to, not as a

defendant, but as an extraditee or a "relator") establishes the existence of "special circumstances." *Wright v. Henkel*, 190 U.S. 40, 63 (1903).

Courts asked to address the question of what constitutes "special circumstances" are left to muddle through; neither the Supreme Court nor our Circuit Court (or any other, for that matter) has developed a concrete, or even particularly useful, definition. One judge in this district has defined "special circumstances" to include - but presumably not be limited to - "the raising of substantial claims upon which the appellant has a high probability of success, a serious deterioration of health while incarcerated, and unusual delay in the appeal process." *In re Extradition of Rouvier*, 839 F.Supp. 537, 539 (N.D. Ill. 1993) (quoting *Salerno v. United States*, 878 F.2d 317, 317 (9th Cir. 1989)). After reading most, if not all, of the cases on bail in the context of extradition, the Court agrees with one recent assessment that "[d]ealing with 'special circumstances' issues seems to require a cautious judgment by the judge, taking into account the totality of the facts and having a healthy respect for this country's international treaty agreements." Federal Procedure, Lawyers Ed. §22:2361 (2006). With this in mind, the Court turns to Edward Mazur's request to be released on bail pending the resolution of a petition to have him extradited to Poland.

With regard to Mr. Mazur's argument that the "special circumstances" framework laid out in *Wright v. Henkel* is unconstitutional, the Court agrees that there is something patently unfair and un-American in the notion that a United States citizen should lose, even in theory, due process rights afforded under the United States Constitution because he is being criminally prosecuted by a foreign government, and not his own government. But unfair is not the same as unconstitutional. And the Seventh Circuit has at least implied - though under different circumstances - that it would be inclined to follow *Wright*. In *Sahagian v. United States*, 864 F.2d 509 (7th Cir. 1988), the Seventh Circuit noted that the extraditee, an American citizen like Mr. Mazur, who was challenging the constitutionality of the United States' extradition treaty with Spain, possessed "an exaggerated notion of the rights guaranteed persons in extradition proceedings in the United States"; in particular, the court noted, "there is a presumption against bail in extradition cases that can only be overcome by a showing of "special circumstances." *Sahagian*, 864 F.2d at 514 n.6 (citing *United States v. Leitner*, 784 F.2d 159, 160-61 (2d Cir. 1986), a case that expressly relies on *Wright*). Thus, although the Seventh Circuit may not yet have addressed the precise issue before the Court today, there is every indication that, if it did, it would uphold the reasoning and framework spelled out in *Wright*, just as

every other circuit to address the question has done. This Court is bound to follow that lead.

Turning to the evidence of "special circumstances," counsel for Mr. Mazur argued that the following facts, viewed collectively, warrant release: Mr. Mazur is a United States citizen; he has strong family ties to the Chicago area; he has cultural and philanthropic ties to the area; he is a respected businessman with ties to several respected businesses in the Chicago area; he has no criminal record; he has cooperated fully with the authorities; several friends and family members have testified that they do not believe he would flee if released; and his wife has offered to post a \$4 million cash bond to secure his appearance at future court appearances. The Court finds that these circumstances, even when viewed collectively, do not make this case "special."

First, the fact that Mr. Mazur was able to parade a slew of witnesses into court to say that he is a great man who would never run away, is nothing special; the Court hears similar testimony in many of the criminal proceedings before it. Nor does the Court see anything "special" in the fact that Mr. Mazur has sponsored and donated money to causes connected to Poland; that merely shows that he is wealthy and charitable. "Special circumstances" requires more than this; the test is satisfied when there is something unique or exceptional about the situation

such that detention would create an injustice or otherwise wreak some exceptional havoc, separate and apart from the usual harms and inconveniences that come with confinement. Courts have allowed bail, for example, where the extraditee's health has seriously deteriorated because of incarceration; where there is an unusual delay in the process or where the extradition proceeding will be unusually long and complex; and where the extraditee has a high probability of succeeding on the merits of the claim. See *Salerno*, 878 F.2d at 317; *In re Extradition of Molnar*, 182 F.Supp.2d at 688-89; *In re Extradition of Nacif-Borge*, 829 F.Supp. at 1216-19. No such circumstances exist here.

Mr. Mazur has argued that bail is warranted because these extradition proceedings are likely to take years. The Court has no intention of allowing these proceedings to drag on that long. Although the Court has indicated that, at the status hearing on November 29, 2006, it will entertain the parties' proposals concerning discovery and the scheduling of the hearing, whatever they may propose, given the limited nature of this Court's review on extradition, see e.g., *Benson v. McMahon*, 127 U.S. 457, 463 (1888); *Eain v. Wilkes*, 641 F.2d 504, 511 (7th Cir.), cert. denied, 454 U.S. 894 (1981); *Abu Eain v. Adams*, 529 F.Supp. 685, 691 (N.D. Ill. 1980), the Court anticipates that the initial stage of these proceedings will be resolved, one way or the other, within the next few months, and that it will not take a

year or two, as Mr. Mazur seems to be anticipating. Thus, Mr. Mazur need not worry that he will be detained indefinitely, or for an unreasonably long period of time, in the Metropolitan Correctional Center.

Mr. Mazur's status as a United States citizen would seem compelling, though once the reasoning behind *Wright* is accepted, the fact that an extraditee is an American citizen ceases to make the case "special." See *In re Extradition of Sacirbegovic*, 280 F.Supp.2d 81, 84-85 (S.D.N.Y. 2003) (citizenship is not a special circumstance). The fact that Mr. Mazur voluntarily surrendered to the Polish authorities for questioning weighs in his favor, as does the fact that he was interrogated, held and then released without being charged. Similarly weighing in Mr. Mazur's favor is the fact that he has consistently adopted a cooperative stance with the authorities, that he knew about the international arrest warrant for almost two years and that he knew about the extradition request for months, yet still continued to live his life, to remain visible and active in the community. As the government points out, however, those facts really go to risk of flight, which is a separate issue. See *Salerno*, 878 F.2d at 317; *United States v. Taitz*, 130 F.R.D. 442, 445 (S.D. Cal. 1990); *In re Extradition of Rouvier*, 839 F.Supp. at 539. The fact that the Polish authorities released Mr. Mazur without charging him might suggest some weakness in the Polish case against Mr. Mazur, but

that consideration is appropriate, if at all, in the context of the Court's consideration of the merits of the extradition petition. In short, none of the facts presented - alone, or in combination - amounts to "special circumstances."

Mr. Mazur has suggested that, in lieu of the special circumstances test, this Court should consider the factors typically applied to pre-trial detainees under the Bail Reform Act; according to Mr. Mazur, those factors, if applied, would suggest that he should be released pending his extradition hearing. First, this is not a criminal proceeding, so the Act and the factors set forth in 18 U.S.C. §3142(g) do not apply. See *In re Extradition of Rouvier*, 839 F.Supp. at 539 (citing *Kamrin v. United States*, 725 F.2d 1225, 1227-28 (9th Cir.), cert. denied, 469 U.S. 817 (1984)). Moreover, even if the Court were to consider those factors, it is extremely doubtful that Mr. Mazur would be granted bail. The statute lists the following factors to be considered in determining whether there are conditions of release that would "reasonably assure the appearance of the person as required and the safety of any other person and the community": (1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence; (2) the weight of the evidence against the person; (3) the history and characteristics of the person including any family ties, employment, financial resources, ties to the

community, criminal history, etc.; and (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. 18 U.S.C. §3142(g). The testimony offered at the hearing on November 15th focused exclusively on the third factor. But, given the nature of the crime as charged by the Polish authorities (solicitation to commit the murder of a high level government official, the apparent equivalent of the head of the FBI in this country, who, by the way, was actually murdered), it is highly likely that Mr. Mazur would be detained if the factors spelled out in the Bail Reform Act were considered. Indeed, if Mr. Mazur were charged with the same offense in this country, it is hard to imagine that any court would conclude otherwise and release him on bond pending trial. And though it is true that this Court is not charged with determining guilt or innocence here, *e.g.*, *Abu Eian v. Adams*, 529 F.Supp. 685, 691 (N.D. Ill. 1980), this Court has already determined that the government had enough evidence to secure the arrest warrant; it has, in other words, already determined that, based upon the State Department documents submitted in support of the warrant, it was more likely than not that Mr. Mazur should be held to answer for the underlying offense.

At the end of the day, the Court is not unmindful of the political considerations involved in ensuring that Mr. Mazur



remains available to answer the charges against him in Poland in the event the Court determines that he should be extradited. In the typical extradition case that has been assigned to this Court, the extraditee has been charged with relatively low level, non-violent crimes such as fraud or embezzlement. That is not the case here. This case involves the murder of one of the top law enforcement officials within the Republic of Poland. Allegedly, General Papala was murdered because he refused to look the other way to allow certain organized crime activities to take place. Such allegations, if true, strike at the very foundation of that country's political system. Indeed, it is so important that the Attorney General of the United States intervened in this matter to request the extradition on behalf of the Republic of Poland. Such involvement, at the highest level of our government, will not be taken lightly.


#### Conclusion

After reviewing the evidence and testimony submitted on the issue, the Court finds that Mr. Mazur has failed to show that there is anything "special" about his case that would warrant his release; although he is a citizen, with strong ties to his community, no criminal history, a successful career in business and connections to respected businesses in the area, these do not amount to the type of "special circumstances" necessary to overcome the presumption against bail that is applied in

extradition cases. Indeed, the only thing "special" about this extradition case is the heinous and high-profile nature of the crime Mr. Mazur is alleged to have participated in in Poland - and that would weigh heavily against release under any test. The Court finds that bail is inappropriate; this finding is bolstered by the concerns unique to extradition matters - the government's interest in honoring its treaties, the potential embarrassment to the government if Mr. Mazur did flee before his hearing. See, e.g., *In re Extradition of Rouvier*, 839 F.Supp. 537, 540 (N.D. Ill. 1993) ("the primary concern is delivering the extraditee to the requesting country; there is a strong national interest in fulfilling treaty obligations."). Mr. Mazur's Application for Bail is denied.

Dated: November 28, 2006

ENTER:

  
\_\_\_\_\_  
ARLANDER KEYS  
United States Magistrate Judge